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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE, Plaintiff and Respondent, v. RORY CARAWAY, Defendant and Appellant.	B209631 (Los Angeles County Super. Ct. No. NA074098)

APPEAL from a judgment of the Superior Court of Los Angeles County. James B. Pierce, Judge. Affirmed.

Gloria C. Cohen, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Susan Sullivan Pithey, Supervising Deputy Attorney General, and Julie A. Harris, Deputy Attorney General, for Plaintiff and Respondent.

Rory Caraway appeals from the judgment imposed following his conviction by jury of transporting, selling, furnishing, or giving away cocaine (Health & Saf. Code, § 11352, subd. (a)), with admissions that he suffered two prior strike convictions (Pen. Code, §§ 667, subds. (b)-(i), 1170.12, subds. (a)-(c)) and served a prior prison term (Pen. Code, § 667.5, subd. (b)). Sentenced to a term of 11 years, he contends that substantial evidence does not support his conviction. We find this contention unsupported and affirm the judgment.

FACTS

The transaction that led to appellant's conviction arose from a Long Beach Police Department investigation of a complaint about prostitution and narcotics. Viewed in accordance with the rules on appeal (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206),[1] the evidence at trial established that on April 11, 2007, Detective John Harrigan, assigned to the vice investigation division and working undercover, telephoned a number obtained from the complaint. Harrigan was "wired" so that other detectives working with him could hear what he said. A man who gave his name as Anthony answered the call, and they discussed Harrigan getting "girls for that night" and "stuff to party with," meaning narcotics. The man took Harrigan's number and said a woman would call him shortly.

A woman did call back. She and Harrigan agreed that for $400, she would get Harrigan a "dub," (meaning $20 worth) of rock cocaine. The woman agreed to meet him at a McDonald's parking lot at Atlantic Avenue and Artesia Boulevard. Harrigan confirmed the appointment in a 7:00 p.m. phone call. At McDonald's, Harrigan met with

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[1] "'On appeal, we must view the evidence in the light most favorable to the People and must presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. [Citation.] [¶] Although we must ensure the evidence is reasonable, credible, and of solid value, nonetheless it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts on which that determination depends. [Citation.] Thus, if the verdict is supported by substantial evidence, we must accord due deference to the trier of fact and not substitute our evaluation of a witness's credibility for that of the fact finder. [Citations.]' (*People v. Jones* (1990) 51 Cal.3d 294, 314 [citation.])"

a woman who was later identified as Ashley Warnock. She told him to follow her burgundy Oldsmobile to the Bristol Motel, at 5541 Atlantic Avenue. He did so and rented Room 211.

In the motel's parking lot, Warnock told Harrigan she would return after dropping off her friend in Compton and would bring the narcotics. When she arrived to Harrigan's room about 15 minutes later, Warnock told him she had had the "stuff" with her, but now could not find it. Harrigan insisted on the "package deal," — drugs and sex— and Warnock left the room to double-check her car downstairs. She returned without the drugs. When Harrigan again insisted on the "package deal," Warnock said she had made a call to someone named Anthony, who would be bringing the drugs.

About 15 minutes later, Warnock had a phone conversation in which she asked, "Are you out front?" She then left the room for a short time and returned with a small, green ziplock baggie containing an off-white, powdery substance that Harrigan believed to be cocaine. The amount present was consistent with a "dub." Warnock handed the powder cocaine to Harrigan, who counted out $400 and placed it on the dresser. He then spoke the prearranged arrest signal, and other detectives entered the room and arrested Warnock. Detective Harrigan opined that 0.21 grams of cocaine would constitute a usable quantity.

Sergeant Lee Debrabander followed Harrigan and Warnock to the motel that evening. He parked in the motel lot, face in, at a place that would afford a good view of the lot and Harrigan's room. When Warnock returned after leaving the motel for 15 minutes, Debrabander saw her apparently looking for something in her car. She then went up to the room, but soon returned to the car and again appeared to rummage around the interior. Warnock again went upstairs, and through the wire Debrabander heard her say she was going to call someone to bring drugs.

After a while, Debrabander observed a blue car enter the parking lot and stop just behind his own. From the backseat of his SUV, the detective saw the driver, whom he identified at trial as appellant, alone in the car. Warnock came downstairs and met appellant at the driver's window, about 10 to 15 feet away from Debrabander.

Debrabander saw appellant[2] reach down into the location of a right pocket. He then "reached around his body with his right hand, and his hand met up with [Warnock's] hand pretty much at the windowsill of the car." Debrabander added, "It didn't look like they were shaking hands. It looked to me like he was handing her something." On cross examination, he said he assumed the appellant was reaching into his pocket based on the movements he appeared to be making. Then he saw his arm go up and saw some kind of contact between his right hand and one of Ashley Warnock's hands. While he did not see anything exchange, their hands touched very briefly , and "It looked to me like he was holding onto something." Warnock then returned to the motel room. Appellant drove away, followed by other detectives. Debrabander participated in arresting a now-naked Warnock in the motel room. On the counter was a baggie of what turned out to be cocaine.

Detective Armand Castellanos followed appellant's blue car after it left the motel. He enlisted officers in marked vehicles to assist in making the arrest. Appellant reached the intersection of Elm and Platt just as the marked cars appeared with their lights and sirens on. Leaving his car in the middle of the intersection, appellant got out and fled on foot. Detective Castellanos and the uniformed officers pursued appellant, who ignored their calls to stop. After about a minute, the officers caught him as he attempted to jump a fence. Detective Castellanos identified appellant at trial.

Detective Jesus Hernandez also followed appellant and identified him at trial. Hernandez searched appellant's car, and found a cell phone and, in the center console, a number of small baggies, comparable in size to the one recovered at the motel room. Based on his experience, Hernandez stated that baggies of this type are often used to package cocaine and methamphetamine for sale.

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[2] Debrabander explained the visibility conditions as follows: "It was nighttime, so it was dark out. But there was overhead lighting from the hotel, so I could easily see. I could see well enough to see when the female [Warnock] was in her car which was even further away."

At the Long Beach Police Department' crime laboratory, multiple tests of the substance seized when Warnock was arrested all showed it to be cocaine, in an amount of 0.21 grams.Admitting that she was a prostitute who had been convicted of selling or furnishing cocaine arising out of the facts of this case, Warnock stated that appellant was a friend who occasionally provided her referrals for social activities, travel, and sometimes prostitution. Detective Harrigan had been one of them.

Warnock denied that the appellant had supplied her with drugs. She already had the cocaine with her when she met Harrigan at the motel. She got it from one of her Hollywood clients named Larry. Warnock added that she would not have asked the appellant for powder cocaine because she thought he "wouldn't be the type of person that I would ask for it . . . . He doesn't appear to me like . . . he would sell powder cocaine. You know, I deal with more upscale people. So he's not -- he doesn't appear upscale to me. You know what I mean?" She claimed she was "high" when she showed up at the motel. Warnock had lied to Harrigan about the cocaine's presence because she wanted to use it herself and because she was wary of mixing prostitution with drugs. She had simply feigned searching for the drugs in her car. Warnock claimed she had summoned appellant to the motel because she was supposed to call him, and because she wanted him to see where she was and "for him to see my face." When appellant arrived, he and she simply exchanged a "closed hand greeting," touching their knuckles at the car window. Appellant did not hand her anything. Warnock then decided she had stalled Harrigan long enough. Afraid that she would lose the promised money, she gave Harrigan the cocaine, and the arrest followed.

The appellant said that he and Warnock work as exotic dancers and refer clients to each other. He admitted speaking to Harrigan and giving him Warnock's number, but denied any reference to drugs. He testified he had gone to see Warnock at the motel because she had asked him to, because they intended to meet later, and he planned to "check on her" because she had called to tell him she was going to be in the area "with somebody." She had asked him to do this because "things done happened to her in the past." When she came down to the car they greeted each other by touching fists, what he

called a Dap. Appellant stated that the car belonged to a woman he was dating and thus he did not know there were baggies in the vehicle. (It was later stipulated that the car was not registered to appellant.) Therefore the baggies were not his. Appellant claimed he had left the car and fled out of fear that the vehicle following him contained Hispanic gang members who intended to shoot at him, as he was a member of an African-American Compton gang. Appellant admitted having been convicted of robbery in 1988. In tears, he denied furnishing the cocaine to Warnock.

DISCUSSION

The standard for appellate review of the sufficiency of evidence to support a criminal conviction is familiar. "[T]he court must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence – that is, evidence which is reasonable, credible, and of solid value – such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt." (*People v. Johnson* (1980) 26 Cal.3d 557, 578; see *People v Rayford* (1994) 9 Cal.4th 1, 23; *People v. Ochoa*, *supra*, 6 Cal.4th 1199, 1206.) "In deciding the sufficiency of the evidence, a reviewing court resolves neither credibility issues nor evidentiary conflicts. [Citation.] Resolution of conflicts and inconsistencies in the testimony is the exclusive province of the trier of fact. [Citation.] Moreover, unless the testimony is physically impossible or inherently improbable, testimony of a single witness is sufficient to support a conviction. [Citation.]" (*People v. Young* (2005) 34 Cal.4th 1149, 1181.)

As the jury was instructed under CALCRIM No. 2300, the elements of the offense of which appellant was convicted are that (1) he furnished or transported a controlled substance, (2) which was cocaine, (3) in a usable amount, with knowledge (4) of its nature as a controlled substance, and (5) that it was present. (See 2 Witkin & Epstein, Cal. Criminal Law (3d ed. 2000) Crimes Against Peace and Public Welfare, §§ 90-92, 94, 95, 97, pp. 602-605, 607, 609, 613.) Appellant in essence challenges the sufficiency of proof of the first element, that he furnished cocaine to Warnock.

Appellant primarily contends that there was not substantial evidence that he furnished the cocaine with which Warnock was arrested, principally because Sergeant

Debradander admitted he did not see something exchanged by appellant and Warnock when they met in the motel parking lot. Appellant's contention lacks merit. The passage of the contraband need not be established by direct evidence. Offenses under Health and Safety Code section 11352, subdivision (a) "can be established by circumstantial evidence and any reasonable inferences drawn from that evidence." (*People v. Meza* (1995) 38 Cal.App.4th 1741, 1746.)

The jury could and did use its common sense to conclude that a controlled substance changed hands when appellant's and Warnock's hands met. Detective Harrigan and Warnock agreed she would bring narcotics. When they met, Warnock said she had none with her and went to look for it in her car. Still unable to find any drugs, she told Harrigan she would get them from the appellant whom Warnock called Anthony, the person with whom Harrigan had first dealt. When appellant arrived, alone, Warnock told Harrigan she was going down to get the cocaine. She met appellant, he reached toward a pocket, he and Warnock touched hands, and it appeared that he was holding something. Warnock immediately returned to Harrigan, now with the cocaine. Moreover, the car appellant drove contained a number of baggies of the type often used, and used here, to hold cocaine. These circumstances, especially the appearance of the cocaine only after appellant seemed to hand something to Warnock, constitute substantial evidence that appellant furnished the cocaine that Warnock delivered to Harrigan.

Appellant argues that the evidence did not negate other possible sources of the cocaine. Specifically, he notes that Warnock was out of police observation for 15 minutes while ostensibly driving a friend, and that Warnock could also have gotten the drugs from her own car, through which she twice rummaged for something. But these theories, never raised at trial, are scarcely credible in light of the actual evidence presented. The jury could properly rely on the circumstantial evidence just discussed.

Appellant also contends that the evidence contained a "fatal gap," similar to the facts of four cases from the 1950s. Those cases are distinguishable. In *People v. Morgan* (1958) 157 Cal.App.2d 756, police dispatched an informant with cash nearby defendant's residence. The informant returned without the cash but with heroin. The "fatal gap" (*id.*

at p. 758) consisted of the failure to prove that the informant had not met anyone else while away from police observation. (*Ibid*.) In *People v Richardson* (1957) 152 CA2d 310, 313, the officer stayed in the car while the defendant and two other persons entered defendant's residence. About 20 minutes later one of the three, not the defendant, came out and handed the officer a packet containing heroin. The evidence was held insufficient. Here, however, Warnock was under observation throughout her movements from the motel room to appellant's car and back to the motel room.

These facts also distinguish the rationales of the other drug cases that appellant cites. Thus, in *People v. Lawrence* (1959) 168 Cal.App.2d 510, the informant who acquired heroin was at the defendant's apartment, out of police observation, for several hours before leaving it. Defendant's wife and another individual also were there. The court held that the evidence could just as easily have supported a finding that the wife had sold the heroin. (*Id.* at pp. 513-514.) Similarly, in *People v. Barnett* (1953) 118 Cal.App.2d 336, the informant-buyer was gone for an hour and a half before returning with heroin, and the officer "knew nothing of [his] whereabouts during that interval of time." (*Id.* at. p. 337.)

On the other hand, in *People v. Fernandez* (1959) 172 Cal.App.2d 747, officers had their informant under observation throughout the time he left and met with defendant. The two were seen to touch hands, the informant made a movement to his cuff, and then returned with heroin. (*Id.* at pp. 750, 752-753.) The court wrote the following:

> "Defendant's contention that there was a 'gap' in the evidence as to the movements of Garcia, is based primarily upon his interpretation of the testimony of Officer McKinley, who testified that through binoculars he saw Garcia and defendant touch hands in the shop and then saw Garcia putting something in the left cuff of his jacket. On cross-examination McKinley said that Garcia as he turned 'was doing this to his cuff (indicating) . . . I couldn't see what he was doing, just turning his cuff, was placing something into the cuff.' He was then asked '. . . when you say "placing something into the cuff," you are assuming, are you not? A. I am assuming.' He then said that he didn't see anything placed in the cuff. Taking the testimony of all the officers together, one or more had Garcia under surveillance at all times and at no time did Garcia have contact with any person other than defendant. Although McKinley did not see Garcia

> after shaking hands with defendant place anything in his cuff, he did see him make a movement as if doing so, and the jury could very well under the evidence reasonably infer that Garcia did receive the narcotic from defendant at that time. There was no 'gap' in the 'line of sight' testimony." (*Id.*. at p. 753.)

Based on these facts, the court distinguished *People v. Richardson, supra, People v. Barnett, supra,* and *People v. Lawrence, supra* and affirmed a conviction of sale of heroin against a challenge for insufficient evidence. (*People v. Fernandez,* at p. 753.)

In the present case, there was no reasonable alternative source for the cocaine Warnock delivered to Harrigan immediately after meeting appellant and touching his hand. The jury properly rejected Warnock's and appellant's version of the events. The evidence that appellant furnished the cocaine, and incidentally transported it as well, was substantial and sufficient.

DISPOSITION

The judgment is affirmed.

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MOHR, J.*

We concur:

FLIER, ACTING P. J.

BIGELOW, J.

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.